



AGENDA ITEM
NO. 4

MEMORANDUM

To: PLANNING COMMISSION

Date: June 12, 2007

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: Subdivision SD 07-02 & Development Agreement Amendment DAA 04-09
Applications: E. Dunne-Delco

REQUEST

A request to subdivide a 1.4-acre portion of a 15 acre site to allow for the construction of 14 units which will represent phase V of the Jasper Park project located on the south west corner of the intersection of San Benancio Way and E. Dunne Ave.

BACKGROUND

These application requests were scheduled for review by the Planning Commission at the May 22 meeting. Also scheduled for the May 22 meeting was the Commission's discussion of the RDCS projects that are behind schedule and consideration of transfers of fiscal year building allocations between projects. The information for the Commission's discussion of the RDCS allocation transfers was not available and therefore the Commission continued their discussion of the transfers to the June 12 meeting.

The Jasper Park project is interested in utilizing early allocations to speed up completion of the project. If the Commission decides to transfer allocations, the applicant would like to be able to incorporate the new allocation dates into the project development agreement. Since the RDCS discussion did not occur at the May 22 meeting the applicant requested continuance to the June 12 agenda.

DISCUSSION/RECOMMENDATION

Attached is the May 22 staff report discussing the proposed subdivision and development agreement amendment request. Also attached are Planning Commission resolutions approving the proposed tentative map, a separate development schedule and recommending Council approval of the Development Agreement amendment.



Memorandum

To: Planning Commission

Date: May 22, 2007

From: Community Development Department

**Subject: Subdivision SD 07-02 & Development Agreement Amendment DAA 04-09
Applications: E. Dunne-Delco**

REQUEST

A request to subdivide a 1.4-acre portion of a 15 acre site to allow for the construction of 14 units which will represent phase V of the Jasper Park project located on the south west corner of the intersection of San Benancio Way and E. Dunne Ave.

RECOMMENDATION

Environmental Assessment:	A Mitigated Negative Declaration was adopted with the approval of the precise development plan.
Application SD 07-02:	Approval, subject to the findings and conditions contained in attached Resolution.
Application DAA 04-09:	Recommend City Council approval, subject to the findings and conditions contained in attached Resolution.
Processing Deadline:	October 2, 2007

SITE DESCRIPTION

Location:	420 and 530 East Dunne Avenue, fronting the southwest corner of East Dunne Avenue and San Benancio Way
Site Area:	14.987 acres (APNs 817-11-067 & 817-11-072)
Zoning / General Plan:	R2-3500 RPD / Multi-Family Low

BACKGROUND

The 78 unit Jasper Park project first received RPD approval in June 2005. It also received subdivision and development agreement approval for Phases I, II, III & IV (35 units {34 allocations plus 1 replacement unit} on approximately 6 acres.) Improvements required with phases I, II, III & IV include the Dunne Ave. frontage improvements, installation of Walnut Grove Dr. and the creation and landscaping of a 1 acre park parcel.

In July 2006 the project received 14 allocations for FY 2009-10.

CASE ANALYSIS

Subdivision: The current 14 lot subdivision will represent Phase V of the Jasper Park project. The subdivision map as submitted is in compliance with the RPD plan approved by the City Council in June 2005. The lot sizes and locations are each per the approved RPD. The applicant is currently in the process of a lot line adjustment in order to create a 1.6 acre park. Staff finds the area devoted to parks and open space uses more than adequate to serve on a pro rata basis the existing and proposed development.

Staff does not have any recommended changes to the proposed tentative map.

Development Agreement: The current project development agreement is proposed to be amended to incorporate the 14, FY 2009-10 allocations. Along with addition of the 2009-10 allocations additional project commitments have been added to keep the project commitments in proportion to the number of allocations. The currently approved development agreement has been attached as Exhibit A of the DAA resolution. Proposed modifications to the agreement are shown in highlighted **bold/italic** text for additions and ~~strike-out~~ for deletion. The development schedule for the project is also proposed to be amended by moving the performance dates into a separate Planning Commission resolution per Commission Policy PCP-06-01. A second resolution has been provide which allows the Commission to approve the project development dates separate from the development agreement.

In addition to the revised allocation number and project commitments, the applicant has asked for clarification of previous affordable housing commitments found in paragraph 14, Section (l) and (m) on page 9 of the development agreement. The proposed modifications are clarification of the actual BMR sizes, number of bedrooms and a change in the requirement to allow for the pulling of future building permits but withholding of the occupancies until the specified numbers of BMRs have passed the framing inspection. Staff believes requested changes are minor and would not negatively affect the quality of the project. Staff recommends approval of the development agreement amendment, as prepared.

CONCLUSIONS/RECOMMENDATIONS

Staff supports the applicant's subdivision and development agreement amendment request subject to the findings and conditions contained in the attached Resolutions. Staff therefore recommends approval of the attached Resolutions.

Attachments

- Resolution approving (subdivision)
- Resolution approving development schedule
- Resolution recommending CC approval of DAA.
- Project Plans

RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING A
TENTATIVE MAP FOR A 14 LOT SUBDIVISION ON A 1.4
ACRE PORTION OF A 15 ACRE SITE LOCATED ON THE
SOUTHWEST CORNER OF EAST DUNNE AVENUE AND
SAN BENANCIO WAY. (APN 817-11-067 & 817-11-072)**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of May 22 and June 12, 2007, at which time the Planning Commission approved application SD-07-02: East Dunne – Delco/DeNova; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the approval of the precise development plan.

SECTION 3. The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.

SECTION 4. The approved project shall be subject to the conditions as identified in exhibit "A", and by this reference incorporated herein.

**PASSED AND ADOPTED THIS 12th DAY OF JUNE, 2007, AT A REGULAR MEETING
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

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ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

A F F I D A V I T

I, _____, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

, Applicant

Date: _____

Other Conditions.

- _____ 1. Project shall comply with all Measure C commitments.
Project shall comply with all mitigation measures contained within the Mitigated Negative Declaration adopted on June 3, 2005.
- _____ 2. Prior to submitting Final Map and Improvement Plans, the developer and design engineer shall schedule a meeting with Public Works to determine how Measure C commitments shall be full filled.
- _____ 3. The proposed lot line adjustment for reminder Parcel A and the Open Space Park parcel shall record prior to recordation of the final map.
- _____ 4. Update current SWPPP and NODES permit to cover additional area.
- _____ 5. Obtain an encroachment permit from the Public Works Department prior to commencement permit from the Public Works Department prior to commencement of any work in the City's right of way or in connection with the City's utility system
- _____ 6. Public Works fees are required for this project and must be paid prior to the issuance of a Building Permit.

RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL APPROVING AN
AMENDED DEVELOPMENT SCHEDULE FOR
BUILDING ALLOCATIONS FY 2005-06 THROUGH FY
2009-10 AWARDED TO APPLICATIONS MP-02-06: E.
DUNNE – DEMPSEY & MC-04-12: E. DUNNE – DELCO
(APNs 817-11-067 & 817-11-072)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 48 building allotments for application MP 02-06 & MC 04-12: E. Dunne-Dempsey (Delco); and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System (RDCS), Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, on July 3, 2004 the City Council adopted Ordinance Number 1733 which set a development schedule for the 34 building allocations award to MP 02-06 & MC 04-12: E. Dunne-Dempsey (Delco); and

WHEREAS, prior to October 25, 2006, Development Agreements incorporated a development schedule to ensure projects comply with the statutory deadlines of the RDCS; and

WHEREAS, to extend deadlines outlined in the development schedule, a property owner/developer was required to file an application to amend the Development Agreement which required public hearings and adoption of an ordinance by the City Council; and

WHEREAS, rather than continuing to require developers to go through a legislative process to amend their development schedules, the Planning Commission adopted Policy PCP-06-01 which allows development schedules and extension of time requests to be approved and adopted by Planning Commission Resolution on consent calendar; and

WHEREAS, PCP-06-01 became effective on October 25, 2006; and

WHEREAS, the amended development schedule for application MP 02-06 & MC 04-12: E. Dunne-Dempsey (Delco) was considered by the Planning Commission at their regular meeting of May 22, 2007, at which time the Planning Commission approved the amended development schedule.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. ADOPTION OF AMENDED DEVELOPMENT SCHEDULE. The Planning Commission hereby adopts the Development Schedule for MP 02-06 & MC 04-12: E. Dunne-Dempsey (Delco) attached to this Resolution as Exhibit A.

PASSED AND ADOPTED THIS 12th DAY OF JUNE 2007, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

EXHIBIT "A"
DEVELOPMENT SCHEDULE

MP-02-06: E. DUNNE – DEMPSEY / MC-04-12: E. DUNNE - DELCO
FY 2005-2006 (8 units) 2006-07 (13 units), FY 2007-08 (5 units), FY 2008-09 (8 units)
FY 2009-10 (14 units)

- | | | |
|-------------|---------------------------------------------------|----------------------------------|
| I. | SUBDIVISION AND ZONING APPLICATIONS | |
| | Applications Filed: | October 14, 2004 |
| II. | SITE REVIEW APPLICATION | |
| | Application Filed: | October 14, 2004 |
| III. | FINAL MAP SUBMITTAL | |
| | Map, Improvements Agreement and Bonds: | |
| | FY 2005-06 (8 units) | July 30, 2005 |
| | FY 2006-07 (13 units) | July 30, 2006 |
| | FY 2007-08 (5 units) | July 30, 2007 |
| | FY 2008-09 (8 units) | July 30, 2008 |
| | <i>FY 2009-10 (14 units)</i> | <i>July 30, 2009</i> |
| IV. | BUILDING PERMIT SUBMITTAL | |
| | Submit plans to Building Division for plan check: | |
| | FY 2005-06 (8 units) | February 15, 2006 |
| | FY 2006-07 (13 units) | August 15, 2006 |
| | FY 2007-08 (5 units) | August 15, 2007 |
| | FY 2008-09 (8 units) | August 15, 2008 |
| | <i>FY 2009-10 (14 units)</i> | <i>August 15, 2009</i> |
| V. | BUILDING PERMITS | |
| | Obtain Building Permits | |
| | FY 2005-06 (8 units) | May 15, 2006 |
| | FY 2006-07 (13 units) | September 30, 2006 |
| | FY 2007-08 (5 units) | September 30, 2007 |
| | FY 2008-09 (8 units) | September 30, 2008 |
| | <i>FY 2009-10 (14 units)</i> | <i>September 30, 2009</i> |

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 17 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-04-09 FOR APPLICATION MC 04-12: E. DUNNE-DEMPSEY (DELCO) TO ALLOW INCORPORATION OF THE 14, FY 2009-10 ALLOCATIONS AND TO ALLOW FOR THE TRANSFER OF THE DEVELOPMENT AGREEMENT PERFORMANCE DATES OUT OF EXHIBIT "A" OF THE DEVELOPMENT AGREEMENT AND INTO A SEPARATE RESOLUTION. (APNS 817-11-067 & 817-11-072)

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 14 building allotments for application MC 04-12: E. Dunne-Dempsey (Delco); and

WHEREAS, in July 2005, the City Council approved the development agreement for application MC 04-12: E. Dunne-Dempsey (Delco); and

WHEREAS, the applicant is requesting to amend the approved development agreement to allow for incorporation of the 14, Fiscal Year 2009-10 allocations awarded to MC 04-12: E. Dunne-Dempsey (Delco) per City Council Resolution 6045; and

WHEREAS, the development agreement schedule in Exhibit "B" has been amended to comply with Planning Commission adopted Policy PCP-06-01 which allows development schedules and extension of time requests to be approved and adopted by Planning Commission Resolution on consent calendar; and

RESOLUTION NO.

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WHEREAS, said development agreement amendment was considered by the Planning Commission at their regular meeting of May 22, 2007, at which time the Planning Commission recommended approval of development agreement amendment application DAA-04-09: E. Dunne-Delco.

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT AMENDMENT. The Planning Commission hereby recommends to the City Council adoption of the modified Development Agreement for MC 04-12: E. Dunne-Dempsey (Delco); attached to this resolution as Exhibit A.

PASSED AND ADOPTED THIS 12TH DAY OF JUNE 2007, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair